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Winning an *Alice* Challenge Requires Specificity

By Patrick T. Muffo

In light of *Enfish* and *DDR Holdings*, software patent owners are quick to point out how their inventions improve the functioning of the computer itself. However, it is well understood that simply improving the functioning of a computer does not overcome *Alice*. So where is the line drawn?

The case of *Visual Memory, LLC v. Nvidia Corp.*, Civil Action No. 15-789-RGA (D. Del. May 27, 2016) focused heavily on the ***specificity*** of the invention when invalidating a software patent at the motion to dismiss stage. In *Visual Memory*, the invention related to a three-tiered memory hierarchy with slow, low-cost memory; medium speed memory; and expensive, high-speed memory. Data is stored into one of the three memories based on pre-programmed characteristics that are based on the processor type.

The court held the invention to be directed to the abstract idea of categorical data storage. Likening the claimed invention to a conventional library, the court held "a library may have an easily-accessible section for popular novels, while maintaining less accessible storage for less-requested materials." Significantly, the court focused on the specificity of the invention:

> Here, there is no analog to the "specific type of data structure" that was found sufficiently unabstract in *Enfish*. Although the claims "touch[] on what is asserted to be an improvement to … computer capabilities," they are not "directed to a 'specific' or 'concrete' improvement in the way software operates," but instead are "directed to … the mere idea of" categorical data storage.

Turning to *Alice* step 2, the court continued its focus on specificity, holding:

> The important question is whether the patent expresses an inventive concept, not whether it improves a computer. The claims here are "recited too broadly and generically to be considered sufficiently specific and meaningful applications of their underlying abstract ideas."

Takeaway

This case appears more applicable to pure software patents as opposed to those patents that recite some software component with an otherwise patent-eligible invention. The District of Delaware is clear in its requirement of a *specific* non-abstract idea

and inventive concept, rather than merely the use of some generic computer technology that would improve the functioning of the computer itself.

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